

# **Exhibit "A"**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SPIRIT REALTY, L.P., a Delaware limited  
partnership,

Plaintiff,

v.

GH&H MABLETON, LLC, a Georgia limited  
liability company; JOHN DOES 1-10,

Defendants.

Civil Action No.: 1:15-CV-05304 DAB GWG

**CERTIFICATION OF COUNSEL IN SUPPORT OF PLAINTIFF'S APPLICATION FOR  
ATTORNEYS' FEES UNDER FED. R. CIV. P. 37(a)(5)(A)**

Pursuant to Federal Rule of Civil Procedure (“FRCP”) 37(a)(5)(A), Spirit Realty, LP (“Plaintiff” or “Spirit”) hereby files this FRCP 37 “*Certification of Counsel in Support of Plaintiff's Application for Attorneys' Fees.*” Under Rule 37(a)(1), the undersigned counsel hereby certifies that it met and conferred in good faith with counsel for Defendant prior to filing the Discovery Motions.<sup>1</sup>

As set forth more fully in the Subpoena Motion and the Deadline Motion, on May 13, 2016, Defendant’s lead counsel, Chris Porterfield, emailed Plaintiff’s undersigned counsel, Isaac Gabriel, with copies of the Unauthorized Subpoenas. The same day, Mr. Gabriel responded to Mr. Porterfield and Defendant’s local counsel, Oliver Blaise, and requested that Defendant withdraw the Unauthorized Subpoenas, or Plaintiff would be forced file a motion to quash, as the Subpoenas were issued well after the close of the Discovery Period. Mr. Porterfield refused to withdraw the Unauthorized Subpoenas. In addition, on May 17, 2016, at approximately 10:30 a.m. EST, undersigned counsel Mr. Gabriel certifies that he called Mr. Porterfield by telephone

<sup>1</sup> Unless otherwise defined herein, all capitalized terms shall have the same meaning as set forth in “*Plaintiff's Application for Attorneys Fees Under Fed. R. Civ. P. 37(a)(5)(A)*”.

to discuss Plaintiff's issues with the Unauthorized Subpoenas and requested withdrawal of the Unauthorized Subpoenas. Mr. Porterfield refused to withdraw the Unauthorized Subpoenas and Mr. Gabriel informed him that Plaintiff would be filing its Subpoena Motion.

Moreover, as set forth more fully in the Discovery Motion, after numerous written communications regarding the lack of a firm deposition date and inadequate discovery responses, on February 25, 2016, undersigned counsel Mr. Gabriel certifies that he and Mr. Porterfield, held their meet and confer by telephone to discuss Plaintiff's issues with the Deposition and Written Discovery Disputes. During the meet and confer, Mr. Porterfield provided no assurance that the deficiencies outlined Plaintiff's discovery letter would be addressed and supplemented by Defendant. Further, Mr. Porterfield insisted that neither he nor his client would appear for a March 4, 2016 deposition, even though his client would be in town and available. Mr. Gabriel advised Mr. Porterfield that if there was not an order quashing the deposition, then he intended to proceed with the deposition. Mr. Porterfield advised that neither he nor his client would attend regardless. Mr. Gabriel then notified Mr. Porterfield that the issue would have to be resolved by the Court and Plaintiff would be filing its Discovery Motion.

Therefore, undersigned counsel hereby certifies that the foregoing efforts constituted a good faith attempt to meet and confer on the disputes in question before filing the Motions and Plaintiff's Application.

Respectfully submitted this 11th day of July, 2016.

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By: /s/ Isaac M. Gabriel  
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